

S/N 10/559,908

In response to the Office Action dated February 26, 2010

**REMARKS**

Favorable reconsideration of this application is requested in view of the above amendments and the following remarks.

Claims 12-14 have been amended. The above amendments are supported in the specification at, for example, paragraph [0055]. Claim 22 has been added and is supported in the specification at, for example, paragraphs [0057] and [0108]. No new matter is added.

**35 USC § 102 Rejections**

In the office action dated October 14, 2009, claims 12-14 have been rejected under 35 USC 102(b) as being anticipated by Russell (US 6,327,679). Applicants respectfully traverse the rejection.

Claim 12 is directed to an information recording medium where defect management information contains defect location information indicating a location of the defective area, a substitute position information indicating a location of the substitute area, and defect status information indicating an attribute of the defect management information. One form of the defect status information indicates that significant user data is not present in the defective area or the substitute area. Another form indicates that the defect status information is unused. The attribute of the defect status information after physical reformatting of the information recording medium indicates the one form.

Therefore, the significant data being not present means that the user data is not present even if data has been written, when seen from a host. By way of example, "one form" in the defect status information corresponds to the case of 0000 in the second status field 21c. And, "another form" in the defect status information corresponds to the case of 1000 in the second status field 21c.

Russell discloses that the unusable bit 224 refers to a flag indicating whether or not the user data contained in a replacement sector is bad data (col. 2, lines 18-20). As indicated in the rejection, when the replacement sector for which the unusable bit 224 has been set ("1") is written to or formatted, the unusable bit is cleared ("0"). Thus, the

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unusable bit 224 is cleared ("0") after being formatted, which indicates that the user data contained in the replacement sector is not bad data.

Assuming *arguendo* that the claimed "defect status information" can be equated to Russell's "unusable bit 224", the claimed "one form after physical reformatting, which indicates that significant user data is not present in any of the defective area and the substitute area", would have to be equated to Russell's "unusable bit 224 is cleared ("0"), which indicates that the user data contained in the replacement sector is not bad data". Therefore, Russell does not indicate defect status information after physical reformatting of the information recording medium indicates the one form, as required in claim 12. Therefore, Russell does not teach or suggest the features of claim 12.

Claim 13, which recites a process for recording the attribute of the defect status information after physical reformatting of the information recording medium indicates the one form, is distinguished from Russell for at least the same reasons as discussed for claim 12 above.

Claim 14, which recites a device for recording information that includes the initialization processing module, which overwrites the defect status information with the one form upon receiving an execution instruction of physical reformatting of the information recording medium. Thus, claim 14 is distinguished from Russell for at least the same reasons as discussed for claim 12 above.

Claims 15 and 16, which depend from claim 14, are distinguished from Russell for at least the same reasons as discussed for claim 12 above.

Accordingly, this rejection should be withdrawn.

### 35 U.S.C. 103 Rejections

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Russell (U.S. Patent No. 6,327,679) in view of Kulakowski et al. (U.S. Patent No. 5,303,219). Applicant respectfully traverses this rejection.

Claim 16, which depends from claim 14, is distinguished from Russell for at least the same reasons as discussed above.

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Kulakowski discloses a method of identifying sectors having defects on an optical disc (see abstract). Kulakowski, however, does not remedy the deficiencies of Russell, and this rejection should be withdrawn.

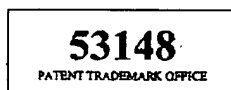
#### New Claims

New dependent claim 22 is included to further clarify the difference between the claimed invention and Russell. In Russell, as shown in FIG. 3, the unusable bit 224 is set ("1") in Step 312, and as shown in FIG. 4B, the unusable bit 224 is cleared ("0") in Step 426. And, as discussed above, this is different than the present invention.

Claim 22 is allowable at least by virtue of its dependence on independent claim 14. Therefore, this new claim should be allowed.

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.



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Respectfully submitted,

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